

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2021-KA-00566-COA

**HECTOR ALMEDARES ALVARADO A/K/A
HECTOR MARARCIA ALMEDARES
ALVARADO A/K/A HECTOR ALVARADO
A/K/A ALVARADO HECTO ALMEDARES**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT: 03/11/2021
TRIAL JUDGE: HON. ELEANOR JOHNSON PETERSON
COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT,
FIRST JUDICIAL DISTRICT
ATTORNEY FOR APPELLANT: OFFICE OF STATE PUBLIC DEFENDER
BY: HUNTER NOLAN AIKENS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAUREN GABRIELLE CANTRELL
DISTRICT ATTORNEY: JODY EDWARD OWENS II
NATURE OF THE CASE: CRIMINAL - FELONY
DISPOSITION: AFFIRMED - 07/19/2022
MOTION FOR REHEARING FILED:
MANDATE ISSUED:

BEFORE WILSON, P.J., WESTBROOKS AND McCARTY, JJ.

WESTBROOKS, J., FOR THE COURT:

¶1. A Hinds County Circuit Court jury convicted Hector Almedares Alvarado of one count of first-degree murder and one count of attempted first-degree murder. Alvarado appeals, arguing the evidence was insufficient to support either conviction, or, alternatively, the verdict was against the weight of the evidence. Finding no error, we affirm.

FACTS

¶2. It is undisputed that on the evening of February 8, 2018, Alvarado entered a Citgo gas

station owned by Sukhjinder Singh and shot and killed Singh with his own gun. It is also undisputed that gunshots were exchanged inside the store between Alvarado and Jeremy Woods, a Citgo employee. The following is a description of the events surrounding the shootings as told by Alvarado (who speaks Spanish and rudimentary English) in his post-arrest interview,¹ trial testimony by Woods (who is deaf and mute), officers of the Jackson Police Department, and shown in video surveillance from cameras at multiple angles inside and outside the Citgo.

¶3. The video begins with footage of Singh preparing food for customers who entered and exited the store without incident. Singh was alone in the store behind the counter preparing food when Alvarado entered the Citgo at 8:32:02 p.m., and the two had a verbal exchange. After listening to Alvarado, Singh came from behind the counter, retrieved his gun (which he stuck in the back of his waistband), and went back to preparing food. Alvarado appeared to be on his cell phone, and he followed Singh behind the counter but continued to periodically look toward the store entrance. At no point was there any noticeable animosity between the two men as they appeared to talk while Singh cooked—at one point Singh even smiled and laughed.² Moments later, Alvarado reached for Singh's gun, and a struggle ensued. Singh was shot three times and died soon after.

¶4. The surveillance footage shows Alvarado reaching for Singh's gun at 8:34:53 p.m. About this time, Woods, an employee and security officer at the Citgo, arrived at the store

¹ Alvarado chose not to testify at the trial, but the interview from the night of the arrest was viewed in full by the jury. The jury also viewed parts of the surveillance video.

² The surveillance video has no audio.

and checked his pockets after exiting his truck. Woods put his hand on the door leading in from the parking lot at 8:35:16 p.m. and entered the store at 8:35:18 p.m. According to Woods, and as corroborated by the video, when he walked in, Alvarado and Singh were fighting behind the food counter. Seconds later, Woods said he felt the vibrations of the gunshots and saw Singh fall to the floor. Video footage recorded Singh being shot at 8:35:22 p.m. As evidenced by the video and testified to by Woods, he then crouched down in front of the food counter and pulled a pistol from his right pocket. (Upon being questioned, Woods said that he always carried a gun to work at the Citgo because it is a dangerous place.) Woods testified that Alvarado shot at him first, and fearing for his life, he returned fire. The men (who were strangers) were not injured in the exchange. Video footage shows Alvarado retreating to a bathroom or storage room after firing at Woods. Woods exited the Citgo and called 911. From the time Alvarado entered the Citgo until the police arrived, the only other people inside were Singh and Woods.

¶5. Jackson Police Officer Jarron Carter was dispatched to the scene. When he got to the Citgo, Woods met Officer Carter in the parking lot. He took Woods' gun—a Glock 17 9 mm pistol with nine rounds remaining in the magazine. Officer Carter entered the store and Alvarado appeared behind the food counter, still holding Singh's gun. About this time, Officer Bruce Broach arrived on the scene. Officer Carter called for Alvarado to drop the gun several times, but he did not. The officers exited the Citgo and called for backup. According to Officer Carter, the SWAT team had to be dispatched to retrieve Alvarado from the store. Detective Terrence Jackson and other officers from the Jackson Police Department

arrived shortly thereafter, entered the store, retrieved Alvarado, and placed him in a patrol car. Detective Jackson testified that Alvarado had been on the phone with police dispatch, but he would not leave the store as instructed.

¶6. After his arrest, Alvarado was questioned by Detective Jackson, an unidentified female officer, and Officer Jackie Amos, who acted as an interpreter. Alvarado denied going to the Citgo to take money from Singh. During questioning, his version of events changed multiple times. The video shows Alvarado walking alone in the street toward the Citgo with his arms out. There are no cars or people following him. But he first stated that he was being chased by an unknown assailant who had “jumped him” and he was going to the Citgo to get help. Alvarado, who appeared distraught (according to his attorney) and possibly intoxicated (according to the State), said that when he arrived at the Citgo, someone inside it had been shot. Upon being told that the incident had been captured by the video surveillance system, Alvarado said that he went to the Citgo to ask for help and a man came in and started shooting. Alvarado further stated that he took Singh’s gun to defend himself against the man who had attacked him. Detective Jackson then told Alvarado that his statement was not corroborated by the video. At this point, Alvarado admitted to taking Singh’s gun and shooting him with it, but he maintained that a man entered the Citgo shooting before he shot Singh. When Detective Jackson told him that this story was not what the video recorded, Alvarado said he shot Singh because he was “nervous” and “didn’t know what he was doing.” Later in the interview, Alvarado said there were two other people in front of him when he shot Singh. A few minutes later, he stated that Singh was taking his

gun out, and Alvarado took it from him to defend himself.

¶7. During the exchange with Detective Jackson, Alvarado denied knowing Singh three times. Alvarado then said that he had met Singh through a Citgo employee. A few minutes later, Alvarado said he had a friend named “G” who lived at his hotel, and “G” had introduced him to Singh. He went on to say that “G” dropped him off at the Citgo. Shortly afterward, Alvarado stated that he walked to the store, and for an unknown reason “G” wanted to kill him. After Detective Jackson confronted him about what was shown on the video footage, Alvarado said he had been with a group of people at one of “G’s” houses, and he heard that there was a \$40,000 bounty on his life; so he ran off, and someone followed him. Alvarado then said there were six armed people in a car following him, so he ran inside the Citgo to get help. Alvarado said that he asked Singh to help him, and he (Alvarado) attempted to call the police. He subsequently said he did not have time to call the police.

¶8. When Detective Jackson asked Alvarado why he did not leave the building when the police arrived, Alvarado said that he did not exit the Citgo because “the person that was shooting at first” was still inside the store. Detective Jackson told Alvarado that the video shows him alone inside the store and Woods outside the Citgo when the police arrived at the scene. At this point, Alvarado questioned the veracity and the clarity of the video. The video shows that Officer Carter entered the store briefly upon his arrival, and Woods stayed in the parking lot. When Officer Broach arrived, Woods entered the Citgo with both officers.

PROCEDURAL HISTORY

¶9. Alvarado was tried by a jury on March 8-11, 2021. The jury received instructions

pertaining to first-degree murder and second-degree (depraved heart) murder with regard to Singh. The jury was instructed on the elements of attempted first-degree murder and self-defense regarding the altercation between Alvarado and Woods. The trial court denied Alvarado's pending motion for a directed verdict. The jury returned a verdict finding Alvarado guilty of first-degree murder for the death of Singh and guilty of attempted first-degree murder of Woods. The trial court sentenced Alvarado to serve (1) a term of life imprisonment in the custody of the Mississippi Department of Corrections on Count I (first-degree murder), and (2) twenty years in the custody of the Mississippi Department of Corrections on Count II (attempted first-degree murder) to run concurrently with the life sentence. The court denied Alvarado's subsequent motion for judgment notwithstanding the verdict or a new trial. Alvarado appeals the jury's verdict on both counts, arguing that the evidence was insufficient to support a conviction or, in the alternative, that the verdict was against the weight of the evidence.

STANDARD OF REVIEW

¶10. “In reviewing a challenge to the legal sufficiency of the evidence, we consider all of the evidence in the light most favorable to the prosecution and accept all evidence supporting the verdict as true.” *Dampeer v. State*, 989 So. 2d 462, 464 (¶7) (Miss. Ct. App. 2008). We then determine, based on the evidence, whether reasonable, fair-minded jurors could have found the defendant guilty. *Goldman v. State*, 406 So. 2d 816, 819 (Miss. 1981). That is, “whether a reasonable juror could rationally say that the State” “proved each element of the crime.” *Lenoir v. State*, 222 So. 3d 273, 279 (¶25) (Miss. 2017) (citing *Poole v. State*, 46 So.

3d 290, 293-94 (¶10) (Miss. 2010)).

¶11. “When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, we will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice.” *Anderson v. State*, 62 So. 3d 927, 944 (¶60) (Miss. 2011); see *Smith v. State*, 925 So. 2d 825, 832 (¶16) (Miss. 2006) (“A motion for a new trial challenges the weight of the evidence[,]” and a ruling on that motion is viewed under the abuse-of-discretion standard.). This Court does not “assume[] the role of juror on appeal. We do not reweigh evidence. We do not assess the witnesses’ credibility. And we do not resolve conflicts between evidence. Those decisions belong solely to the jury [, and we] . . . view the evidence in the light most favorable to the verdict[.]” *Little v. State*, 233 So. 3d 288, 289 (¶1) (Miss. 2017).

DISCUSSION

¶12. The court denied Alvarado’s motion for a directed verdict and his motion for a new trial. Alvarado challenges the legal sufficiency and the weight of the evidence against him for both convictions.

I. Sufficiency of the Evidence

¶13. In reviewing the legal sufficiency of the evidence, we have very limited authority to disturb the jury’s verdict. *McFee v. State*, 511 So. 2d 130, 133 (Miss. 1987). This Court has held that “[t]he jury is charged with the responsibility of weighing and considering conflicting evidence, evaluating the credibility of witnesses, and determining whose

testimony should be believed. The jury has the duty to determine the impeachment value of inconsistencies or contradictions as well as testimonial defects of perception, memory, and sincerity.” *Ford v. State*, 737 So. 2d 424, 425 (¶8) (Miss. Ct. App. 1999) (citation omitted).

A. First-Degree Murder

¶14. Alvarado was convicted of the first-degree murder of Singh in violation of Mississippi Code Annotated section 97-3-19(1)(a) (Supp. 2017). Alvarado argues that the State failed to prove the element of deliberate design and that the shooting was accidental or, at worst, second-degree (depraved heart) murder. He asks that his conviction for first-degree murder be reversed and an acquittal rendered. Alternatively, he seeks to have his conviction for first-degree murder reversed and his case “remand[ed] for re-sentencing for second-degree murder under the direct-remand rule.” As a final alternative, Alvarado requests that his conviction be reversed and his case remanded for a new trial.

¶15. First-degree (deliberate design) murder is defined as “[t]he killing of a human being without the authority of law by any means or in any manner . . . [w]hen done with deliberate design to effect the death of the person killed, or of any human being . . .” Miss. Code Ann. § 97-3-19(1)(a). The State was required to prove beyond a reasonable doubt that “(1) [Alvarado] killed [Singh]; (2) without authority of law; and (3) with deliberate design to effect his death.” *Williams v. State*, 164 So. 3d 1078, 1080 (¶7) (Miss. Ct. App. 2015).

¶16. The fact that Alvarado killed Singh is unquestioned, as is the fact that Alvarado was not acting under the authority of law when the shooting occurred. The issue before us is whether Alvarado acted with deliberate design. “Deliberate design” simply “connotes an

intent to kill.” *Holliman v. State*, 178 So. 3d 689, 698 (¶19) (Miss. 2015). The Mississippi Supreme Court “has held that ‘unless one expresses his intent, the only method by which intent may be proven is by showing the acts of the person involved at the time, and by showing the circumstances surrounding the incident.’” *Id.* (quoting *Morris v. State*, 748 So. 2d 143, 147 (¶17) (Miss. 1999)). Additionally, when discussing “deliberate design,” this Court has held:

The essence of the required intent is that the accused must have had some appreciable time for reflection and consideration before committing the fatal act. Deliberate design to kill a person may be formed very quickly, and perhaps only moments before the act of consummating the intent. Furthermore, deliberate design may be inferred through the intentional use of any instrument which, based on its manner of use, is calculated to produce death or serious bodily injury.

Ashmore v. State, 302 So. 3d 707, 714 (¶20) (Miss. Ct. App. 2020) (quoting *Parvin v. State*, 212 So. 3d 863, 868 (¶7) (Miss. Ct. App. 2016)).

¶17. Alvarado maintains the evidence “showed that [he] acted on impulse in grabbing Singh’s gun as Woods entered the store, and the shots were fired without any ‘appreciable time for reflection and consideration.’” Video footage shows that Alvarado entered the Citgo at 8:32:02 p.m., and he did not reach for Singh’s gun until 8:34:53 p.m. Woods did not put his hand on the door leading in from the parking lot until 8:35:16 p.m. and did not enter the store until 8:35:18 p.m. According to Woods, and as corroborated by the surveillance video, when he walked in, Alvarado and Singh were already fighting behind the food counter. Based on the sequence of events as documented by the video surveillance cameras, two minutes and fifty-one seconds elapsed between Alvarado’s entering the store and his

reaching for Singh's gun. It is uncontroverted that during these two minutes and fifty-one seconds, Alvarado and Singh were alone in the Citgo.

¶18. Even if Alvarado did not originally enter the Citgo with the deliberate design to kill Singh, it was entirely reasonable for the jury to believe that two minutes and fifty-one seconds was enough time for him to form the requisite intent to kill Singh. As the State pointed out, Alvarado's "[taking the gun] was not an accident. It was intentional. It was willful. It was purposeful what he did. [Alvarado] didn't accidentally reach into [Singh's] waistband to get that gun. He took it. You saw him take it." The video footage the jury saw clearly showed Alvarado hovering behind Singh and out of Singh's sight. The jury was entitled to conclude that Alvarado's quick snatch of Singh's pistol from his waistband, coupled with three immediate shots fired at (and striking) Singh, evinced deliberate design. Despite the fact that he continually maintained a need to defend himself, Alvarado did not establish evidence of being threatened or of anyone chasing him when he entered the Citgo. There is no evidence that Singh provoked him once he entered the store, and Singh was busy preparing food when Alvarado took his gun. It was reasonable for the jury to believe the sequence of events provided by Woods and the video rather than the one proposed by Alvarado, and a reasonable jury could rationally believe that Alvarado killed Singh with deliberate design.

¶19. Also before the jury was the fact that when questioned by Detective Jackson, Alvarado changed his story numerous times. The jury learned that Alvarado denied knowing Singh three times, and when he finally admitted to knowing Singh, he gave two different versions

of how the two met. Alvarado offered Detective Jackson at least four versions of Singh's shooting, including that (1) Singh had already been shot when he entered the Citgo; (2) he took Singh's gun to defend himself against the man who had attacked him; (3) he shot Singh because he was "nervous" and "didn't know what he was doing"; and (4) Singh was taking his gun out, and Alvarado took it from him to defend himself. It was the responsibility of the jury, not this Court, to weigh Alvarado's testimony and determine his credibility. *Donelson v. State*, 158 So. 3d 1154, 1160-61 (¶31) (Miss. Ct. App. 2014). We cannot say that it was unreasonable for the jury to find Alvarado's testimony untrustworthy.

¶20. When an appeal based on the sufficiency of the evidence is before this Court, we must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Nolan v. State*, 61 So. 3d 887, 893 (¶24) (Miss. 2011). In this instance, the jury could find proof beyond a reasonable doubt of the element of deliberate design based on Alvarado's acts and the circumstances at the time of the killing as set forth in the discussion above. Sufficient evidence existed to support the jury's conviction of Alvarado for first-degree murder, and we do not reverse its decision.

B. Attempted First-Degree Murder

¶21. Alvarado was convicted of the attempted first-degree murder of Woods. Before retiring to deliberate, the jury was instructed on the elements of attempted first-degree murder and self-defense. Under Mississippi Code Annotated section 97-1-7(2) (Rev. 2014), "[e]very person who shall design and endeavor to commit an act which, if accomplished, would

constitute an offense of murder . . . but shall fail therein, or shall be prevented from committing the same, shall be guilty of attempted murder[.]” Mississippi Code Annotated section 97-3-15(1)(f) (Supp. 2016) provides that “[t]he killing of a human being . . . shall be justifiable . . . [w]hen committed in the lawful defense of one’s own person or . . . where there shall be reasonable ground to apprehend a design to commit a felony or to do some great personal injury, and there shall be imminent danger of such design being accomplished[.]” Alvarado argues that the State failed to prove the element of deliberate design; thus, his conviction for attempted first-degree murder should be reversed and his case remanded for a new trial.

¶22. “An attempt to commit a crime consists of three elements: (1) an intent to commit a particular crime; (2) a direct overt act done toward its commission; and (3) the failure to consummate its commission.” *Green v. State*, 269 So. 3d 75, 82 (¶19) (Miss. 2018). Alvarado maintains that the elements needed to prove attempted first-degree murder, as stated above, are not present because he did not intend to commit a crime, and he shot at Woods in necessary self-defense. “Self defense or justifiable homicide is a defense to a criminal act.” *McDowell v. State*, 311 So. 3d 1252, 1263 (¶32) (Miss. Ct. App. 2021) (quoting *Brown v. State*, 222 So. 3d 302, 307 (¶20) (Miss. 2017)). And “[a] successful self-defense argument requires that the jury believe that it was objectively reasonable for the defendant to believe he was in danger of imminent death or serious bodily harm.” *Wilder v. State*, 118 So. 3d 628, 631 (¶9) (Miss. Ct. App. 2012).

¶23. Alvarado maintains that “[w]hen Woods entered the store, Alvarado reacted and

grabbed Singh's gun and wrestled it away from Singh, shooting Singh in the process." But Alvarado misstates the evidence that was presented to the jury. The video footage shows that Alvarado reached for Singh's gun at 8:34:53 p.m. The video showed that Woods did not put his hand on the door leading in from the parking lot until 8:35:16 p.m. and did not enter the store until 8:35:18 p.m. Alvarado and Singh were already fighting behind the food counter when Woods entered the Citgo, according to Woods and as corroborated by the surveillance video.

¶24. Additionally, Woods did not enter the store with his weapon drawn. As evidenced by the video and Woods' testimony: after Woods saw Singh fall to the floor, he crouched down in front of the food counter and pulled a pistol from his right pocket. Woods also testified that Alvarado shot at him first, and he (Woods) returned fire because he was afraid.

¶25. "As to a claim of self-defense, the jury is the ultimate judge of whether the defendant acted in a manner to justify self-defense." *Webster v. State*, 817 So. 2d 515, 519 (¶13) (Miss. 2002). Based on the testimony and evidence presented at trial, a reasonable jury could rationally find proof beyond a reasonable doubt that Alvarado shot at Woods with deliberate design rather than in self-defense. Sufficient evidence existed to support the jury's conviction of Alvarado for attempted first-degree murder, and we do not reverse its decision.

II. Weight of the Evidence

¶26. "While the motion for a directed verdict presents to the trial court a pure question of law, the motion for a new trial is addressed to that court's sound discretion. . . . [A] defendant seeking a new trial is inherently not interested in a final discharge." *Fleming v. State*, 732

So. 2d 172, 183 (¶37) (Miss. 1999) (citations omitted). “A new trial based on the weight of the evidence should be granted only in exceptional cases in which the evidence preponderates heavily against the verdict.” *Clark v. State*, 237 So. 3d 844, 847 (¶13) (Miss. Ct. App. 2017) (internal quotation marks omitted). In this instance, and as is detailed in our previous discussion, our review of the evidence leaves us unpersuaded that the State’s case was so weak or the defendant’s proof was so persuasive that the jury’s decision to convict for first-degree murder amounts to a manifest injustice. The same is true regarding the jury’s conviction of Alvarado for attempted first-degree murder. The trial court’s decision to deny Alvarado’s motion for a new trial on either charge was not an abuse of discretion, and we do not reverse it.

CONCLUSION

¶27. Based on the foregoing, we find that the State presented sufficient evidence that Alvarado’s actions on the day of the shootings constituted first-degree murder and attempted first-degree murder and that reasonable jurors could have rationally found Alvarado guilty based on the evidence presented at trial. Furthermore, the jury’s verdict was not contrary to the overwhelming weight of the evidence, and no new trial is warranted. Finding no error, we affirm.

¶28. **AFFIRMED.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., GREENLEE, McDONALD, LAWRENCE, McCARTY, SMITH AND EMFINGER, JJ., CONCUR.